No. 05-1559

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SUPREME COURT, U.S.

In The Supreme Court of the United States

CAPTAIN SHERIFF SAUDI,
Petitioner,

v.

NORTHROP GRUMMAN CORPORATION; NEWPORT NEWS SHIPBUILDING INC.; KEPPEL GROUP CORPORATION, d/b/a Keppel Offshore & Marine, Limited, d/b/a Keppel Shipyard (Pte.), Ltd.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is a Federal Court required to transfer venue of an action where the party requesting the changes has not filed a Motion to Transfer and has not established that the court to which the transfer was sought, would have jurisdiction.

CORPORATE DISCLOSURE STATEMENT

Keppel Group Corporation, a/k/a Keppel Corporation Limited ("KCL") is a publicly held corporation listed on the Singapore Stock Exchange. KCL is the ultimate parent of Keppel Offshore and Marine Limited, which owns 100% of Keppel Shipyard Ltd. a/k/a Keppel Shipyard (Pte.), Ltd. Four institutional investors own ten percent or more of KCL as follows: Temasek Holdings (Pte.), Ltd.; DBS Nominees Pte. Ltd. (wholly owned by publicly listed DBS Bank Limited); Raffles Nominees Pte. Ltd. and Citibank Nominees Singapore Pte. Ltd. Each of the four investors are private Singapore corporations.

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RULE

FED. R. CIV. P. 4(k)(2) 1

STATEMENT OF THE CASE

Petitioner, Captain Sheriff Saudi ("Saudi") alleges that he sustained personal injuries in international waters as a result of the negligence of respondents Keppel Group Corporation and its affiliated entities Keppel Offshore & Marine, Limited and Keppel Shipyard (Pte.), Ltd. ("Keppel"). Saudi has made similar allegations against co-respondent, Northrop Grumman, etc., however the issues raised as grounds for granting a Writ of Certiorari are different as between the Respondents.

Saudi relied upon Rule 4(k)(2) of the Federal Rules of Civil Procedure as the sole basis for jurisdiction over Keppel in Virginia. The District Court ruled that Saudi failed to establish personal or general jurisdiction and dismissed the suit against Keppel. This ruling is not the subject of the Petition. When District Court Judge Morgan, in open court

announced his intention to dismiss the case against Keppel for lack of personal jurisdiction, Saudi stated, "Your Honor, I understand your Order for granting the Motion to Dismiss. Is that also allowing me to be able to transfer it to Brownsville?" (Pet. App. 63a.) The basis for Saudi's Petition as it relates to Keppel is limited to the Court's failure to transfer the action to Texas. Saudi, in his appendix, fails to print the colloquy that led up to the quote. Suffice it to say that Saudi did not, at that point, or at any other point in the proceedings, file or verbally make a motion for a transfer.

It is settled that transfers will be granted only where personal jurisdiction does not exist in the transferor court and it is affirmatively shown to exist in the transferee forum. See In re Carefirst of Maryland, Inc., 305 F.3d 253, 255-56 (4th Cir. 2002).

As noted by the Fourth Circuit in its opinion below, "Captain Saudi has never shown that suit against Keppel could have been brought in Texas. 28 U.S.C. § 1406(a), see also City of Va. Beach v. Roanoke River Basin Ass'n, 776 F.2d 484, 489 (4th Cir. 1985)." (Pet. App 8a.)

Saudi erroneously rests his argument on cases addressing a factor related to the second requirement of § 1406(a), that a litigant's statute-of-limitations problem should be included within a court's calculus of whether a § 1406(a) transfer is "in the best interest of justice." As noted by the Fourth Circuit, no Motion to Transfer was made and no showing was made that the transferee forum would have jurisdiction, thus the issue of the statute of limitations was irrelevant. Saudi's pinpoint cite within Shushan of the Goldlawr case is not a point of contention in this case either. Carteret Sav. Bank,

FA v. Shushan, 919 F.2d 225, 228 (3d Cir. 1990) (citing Goldlawr, Inc. v. Heiman, 369 U.S. 463 (1962) (upholding that a court has the power to transfer a case even though it lacks personal jurisdiction over a defendant)), cert. denied, 506 U.S. 817 (1992).

REASONS WHY THE PETITION SHOULD BE DENIED

Saudi makes no claim that there is a conflict between the circuits with regard to the basis for a transfer pursuant to § 1406(a) and the Fourth Circuit expressly held that the District Court did not abuse its discretion in refusing to transfer.

CONCLUSION

The petition fails to establish a basis for granting certiorari. The rejection of Saudi's suggestion that a transfer might be "allowed" is fully supported by the law and does not raise any issues of general importance. The Petition should be denied.

Respectfully submitted,

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